

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

THOMAS MORRISON, JR.

PLAINTIFF

v.

Case No. 4:18-cv-4129

BIOMET, INC.; BIOMET ORTHOPEDICS, LLC;
and BIOMET U.S. RECONSTRUCTION, LLC

DEFENDANTS

ORDER

Before the Court is Plaintiff's Motion for Substitution. (ECF No. 195). Defendants have not responded and their time to do so has passed. *See* Local Rule 7.2(b). The matter is ripe for consideration.

On April 13, 2020, Defendants notified the Court that Plaintiff passed away, that his estate was working to make necessary arrangements to substitute parties, and that once substituted, the parties would resume ongoing settlement negotiations. On April 15, 2020, the Court lifted all deadlines set out in this case's Final Scheduling Order to facilitate that process. The Court also gave Plaintiff until September 28, 2020 to file either a notice of settlement or a motion for a new trial date and a new Final Scheduling Order.

On July 10, 2020, Plaintiff filed a motion to substitute Eunice Thrasher, the administrator of Plaintiff's estate, as the plaintiff to proceed forward with the surviving lawsuit. Rule 25 provides, in relevant part, for the substitution of parties if a party dies while litigation is ongoing. Fed. R. Civ. P. 25(a). "A motion for substitution may be made by any party or by the decedent's successor or representative." *In re Baycol Prod. Litig.*, 616 F.3d 778, 782 (8th Cir. 2010). "[I]t is the prospective plaintiff's burden to put forth evidence to demonstrate that they are proper parties for substitution." *Torres v. Bayer Corp.*, No. CV 04-4350, 2012 WL 13076349, at *1 (D. Minn.

June 22, 2012) (citing Fed. R. Civ. P. 25).

Upon consideration, the Court finds that good cause for the motion has been shown. Plaintiff has provided the Court with an order from the Circuit Court of Hempstead County, Arkansas, Probate Division, appointing Eunice Thrasher as the administrator of Plaintiff's estate. (ECF No. 195-1). Accordingly, the Court deems it appropriate to substitute Eunice Thrasher in place of Plaintiff to continue with the surviving lawsuit.

Accordingly, Plaintiff's motion (ECF No. 195) is hereby **GRANTED**. The Clerk of Court is **DIRECTED** to substitute "Eunice Thrasher, as Personal Representative of the Estate of Thomas Morrison, Jr.", as the plaintiff to this lawsuit, and to amend the case caption to reflect this. The parties have until the close of business on **September 28, 2020** to file either a notice of settlement or a motion for a new trial date and a new Final Scheduling Order.¹

IT IS SO ORDERED, this 29th day of July, 2020.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge

¹ The parties are reminded that if a new Final Scheduling Order is issued, it is unlikely that any other continuances or extensions of deadlines will be granted.